

REMARKS

After entry of this Amendment, the pending claims are: claims 1-15 and 19-33. The Office Action dated February 21, 2007 has been carefully considered. Claims 1-4 and 6-15 have been amended without prejudice to bring them more in line with customary US practice. Claim 1 has also been amended without prejudice to make explicit what was originally implicit. Claims 19-33 have been added. No new matter has been added. Reconsideration and allowance of the present application in view of the above Amendments and the following Remarks is respectfully requested.

In the Office Action dated February 21, 2007, the Examiner:

- rejected claims 1-14 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,936,071 to Marnay et al. (“Marnay”); and
- rejected claim 15 under 35 U.S.C. 103(a) as being unpatentable over Marnay in view of U.S. published patent application No. 2004/0024462 to Ferree et al. (“Ferree”).

Independent Claim 1

Independent claim 1 was rejected as being anticipated by Marnay. Independent claim 1 requires, *inter alia*, two articulating parts each having a slide surface wherein the slide surfaces are curved and wherein the slide surfaces are saddle-shaped. It is respectfully submitted that Marnay does not disclose, teach, or suggest a saddle-shaped surface. Rather, Marnay discloses an intervertebral implant comprising an upper part 2, a lower part 3, and an insert member 4 wherein the upper part 2 has an underside 11 with a spherical indentation 12 for slideably contacting the spherically curved top side 25 of the insert member 4. Thus, it is respectfully submitted that Marnay discloses a pair of convex/spherical contacting surfaces. There is absolutely no disclosure in Marnay of a saddle-shape surface.

Moreover, independent claim 1 also requires, *inter alia*, an intervertebral implant comprising two articulating parts, each having an outermost end for contacting bone, wherein the outermost ends each include a connection element. At least one of the connecting elements including an oval recess for receiving one of the outermost ends of the

adjoining articulating part; the recess being fitted with an axially terminal cavity and the outermost end of the adjacent articulating part comprises a widening so that said at least one articulating part is slideably displaceable with respect to said adjoining connecting element.

It is respectfully submitted that Marnay does not disclose, teach, or suggest an articulating surface that is slideably displaceable with respect to said cover plates while in use (*i.e.*, once implanted) as required by independent claim 1. Rather, Marnay discloses an intervertebral implant comprising an upper part 2, a lower part 3, and an insert member 4 wherein the lower part 3 includes a central indentation 19 for slideably receiving the insert member 4. The insert member 4 having a detent protrusion 28 for securely engaging a detent recess 20 formed in the lower part 3 so that once inserted the position of the insert member 4 is fixed with respect to the lower part 3. Thus, it is respectfully submitted that Marnay does not disclose an oval recess sized and configured to receive the outermost end of the adjoining articulating part wherein the recess is sized and configured to permit the articulating part to be slideably displaceable with respect to said adjoining connecting element.

For at least the above-identified reasons, it is respectfully submitted that Marnay does not disclose, teach or suggest all of the limitations of independent claim 1. Thus, it is respectfully submitted that independent claim 1 is allowable over the cited prior art. Withdrawal of this rejection and allowance of independent claim 1 is respectfully requested.

Furthermore, as claims 2-14 all depend from independent claim 1, it is submitted that these claims are equally allowable. Withdrawal of these rejections and allowance of claims 2-14 is also respectfully requested.

Dependent claim 15

Dependent claim 15 was rejected as being unpatentable over Marnay in view of Ferree. As described above, Marnay does not disclose, teach, or suggest all of the limitations of independent claim 1. It is respectfully submitted that Ferree does not overcome these limitations. It should be noted that Ferree was cited only for the proposition that a ceramic material could be used to make an implant. Thus, for at least the reasons identified above, it is respectfully submitted that Marnay, either alone or in combination with Ferree, does not disclose, teach or suggest all of the limitations of dependent claim 15. Thus, it is

respectfully submitted that dependent claim 15 is allowable over the cited prior art.
Withdrawal of this rejection and allowance of dependent claim 15 is respectfully requested.

Newly Added Independent Claims 19 and 31

Newly added independent claims 19 and 31 require, *inter alia*, an intervertebral implant comprising a first member having a first saddle-shaped contact surface and a second member having a second saddle-shaped contact surface for contacting the first saddle-shaped contact surface of the first member. As previously discussed above, Marnay does not disclose, teach, or suggest a saddle-shaped surface. Rather, Marnay discloses a pair of convex/spherical contacting surfaces.

Moreover, newly added independent claim 19 requires, *inter alia*, an intervertebral implant comprising a first end plate having an inner side and a first member having a first end, the first end being sized and configured to contact the first end plate, wherein the inner side of the first end plate includes a recess and the first end of the first member is sized and configured to be received within said recess so that said first member is moveable with respect to said first end plate even after implantation. Similarly, independent claim 31 requires, *inter alia*, an intervertebral implant comprising a first end plate having an inner side and a first member having a first end, the first end being sized and configured to contact the first end plate, wherein the inner side of the first end plate includes a recess and the first end of the first member is sized and configured to be received within said recess so that said first member is slideably displaceable, *in-situ*, with respect to said first end plate.

As previously discussed above, it is respectfully submitted that Marnay does not disclose, teach, or suggest a first member which is moveable with respect to said cover plates while in use (*i.e.*, once implanted) as required by independent claims 19 and 31.

For at least the above-identified reasons, it is respectfully submitted that newly added independent claims 19 and 21 are allowable over the cited prior art. Allowance of independent claims 19 and 31 is respectfully requested.

Furthermore, as claims 20-30 all depend from independent claim 19 and claims 32 and 33 depend from independent claim 31, it is submitted that these claims are equally allowable. Allowance of claims 20-30m 32 and 33 is also respectfully requested.

CONCLUSION

Applicants respectfully submit that all outstanding rejections have been addressed and are now overcome. Applicants further submit that all claims pending in this application are patentable over the cited prior art. Favorable reconsideration and withdrawal of those rejections is respectfully requested.

A fee of \$550.00 is believed due in connection with the filing of this Amendment. The Commissioner is hereby authorized to charge this fee to Deposit Account No. 19-4709. The Commissioner is also hereby authorized to charge any other fees which may now or hereafter be due in this application to Deposit Account No. 19-4709.

In the event that there are any questions, or should additional information be required, please contact Applicants' attorney at the number listed below.

Respectfully submitted,

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